

**FILED**

**NOT FOR PUBLICATION**

**AUG 01 2006**

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARLOS SANCHEZ HERNANDEZ;  
MARIA FELIX GONZALEZ,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 05-72828

Agency Nos. A78-368-822  
A78-368-823

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted July 24, 2006<sup>\*\*</sup>

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Carols Sanchez Hernandez and Maria Felix Gonzalez, husband and wife, natives and citizens of Mexico, petition pro se for review of the Board of Immigration Appeals' ("BIA") order denying their motion to reopen removal proceedings. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *See Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying petitioners' second motion to reopen because it was numerically barred and presented evidence that was previously available. *See* 8 C.F.R. § 1003.2(c)(1)&(2).

Petitioners' contention that the agency denied their motion to reopen in a manner that amounts to cruel and unusual punishment, does not state a colorable due process claim. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

We lack jurisdiction to consider petitioners' challenges to the BIA's October 27, 2004 and December 21, 2004 orders, because they failed to file timely petitions for review of those orders. *See Andia v. Ashcroft*, 359 F.3d 1181, 1183 n.3 (9th Cir. 2004).

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**